

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

CAMERON RITCHIE,)	
)	
Plaintiff,)	
)	
vs.)	Civil Action No. 07-257Erie
)	
DEPUTY WARDEN VINCENT)	
KINNANE, et. al.)	
)	
Defendants)	

MEMORANDUM ORDER

Plaintiff's Complaint [Doc. #1] was filed on September 25, 2007 and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates. Subsequent to the filing of this first Complaint, Plaintiff filed an Amended Complaint on October 29, 2007 [Doc. #11].

Defendants filed a "Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(6)" on May 27, 2008 [Doc. #55]. In their motion, they asked that the motion to dismiss be treated as a Motion for Summary Judgment Pursuant to Federal Rule of Civil Procedure 56. Motion to Dismiss, p. 1.

On November 21, 2008, Magistrate Judge Baxter issued a report and recommendation, recommending that the motion to dismiss, or in the alternative for summary judgment be granted. The parties were allowed ten (10) days from the date of service to file objections. Service was made on Plaintiff by certified mail at USP Canaan, where he is incarcerated, and on Defendants. No objections were filed.

Rule 72 of the Federal Rules of Civil Procedure provides, in pertinent part “the district court may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.” Fed.R.Civ.P. 72(b). After de novo review of the pleadings and documents in the case, together with the report and recommendation, the following order is entered:

AND NOW, this 2nd day of January, 2009, it is HEREBY ORDERED, ADJUDGED AND DECREED that the report and recommendation of Magistrate Judge Baxter, dated November 21, 2008, is adopted as the Opinion of the Court.

It is further hereby ORDERED, ADJUDGED AND DECREED that Defendant’s “Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(6)” [Doc. #55], treated by this Court as a motion for summary judgment, is GRANTED and Plaintiff’s Amended Complaint against Defendants is DISMISSED.

The Clerk of Court shall mark this case CLOSED.


MAURICE B. COHILL, JR.
Senior District Court Judge

cc: Susan Paradise Baxter
U.S. Magistrate Judge

all parties of record _____